

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JIM CASSI, an individual,
Plaintiff,

v.
GENERAL MOTORS, LLC, a limited
liability company; and DOES 1
through 10, inclusive,

Defendant.

No. 2:23-cv-01801 WBS JDP

ORDER RE: PLAINTIFF'S MOTION
TO REMAND AND DEFENDANT'S
MOTION TO DISMISS

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Plaintiff Jim Cassi filed this action against General Motors, LLC ("GM") in state court, alleging violations of the Song-Beverly Act, fraud, and violations of the Business & Professionals Code § 17200 ("UCL"). (Compl. (Docket No. 1-1)..). Defendant removed this action to federal court based on diversity jurisdiction. (Docket No. 1.) Defendant then filed a motion to dismiss. (Mot. to Dismiss (Docket No. 8).) Plaintiff filed a motion to remand. (Mot. to Remand (Docket No. 22).)

I. Motion to Remand

1 A. Legal Standard

2 Civil cases not arising under federal law are removable
3 to federal court only if each plaintiff's citizenship is
4 different from each defendant's citizenship, and the amount in
5 controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1). The court
6 finds that defendant has established both with a preponderance of
7 the evidence.¹

8 1. Diversity

9 Plaintiff alleges that he is a resident of Modesto, CA.
10 (Compl. ¶ 1.) Plaintiff's counsel has also provided defendant
11 with a copy of the vehicle lease agreement which lists a
12 California address for plaintiff. (Strutz Decl. (Docket No. 24-
13 2).) This is sufficient to show that plaintiff is a California
14 citizen. See Bradley Min. Co. v. Boice, 194 F.2d 80, 84 (9th
15 Cir. 1951) (plaintiff's state of residence presumptively state of
16 citizenship); Salazar v. Ford Motor Co., No. 2:21-cv-06756-FLA,
17 2022 WL 16855563, at 4 (C.D. Cal. Nov. 10, 2022) (party may rely
18 on an address listed in a purchase agreement to meet burden of
19 establishing individual's citizenship) (collecting cases).

20 Defendant is headquartered in and has its principal
21 place of business in Michigan; it is incorporated in Delaware.
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23 ¹ Accompanying plaintiff's remand reply are evidentiary
24 objections to defendant's Kuhn Declaration. (Objs. (Docket No.
25 26).) Specifically, plaintiff argues that various declarations
26 regarding GM's citizenship (1) lack the proper foundation
27 pursuant to Federal Rule of Evidence 602, and (2) are conclusory.
28 (Objs.) Plaintiff's objections are without merit. Timothy Kuhn
is employed as counsel for GM (Kuhn Decl. (Docket No. 24-3) ¶ 1.)
This is sufficient to establish Mr. Kuhn's qualification to speak
on GM's corporate citizenship. Accordingly, the court will deny
plaintiff's evidentiary objections and motion to strike.

(Kuhn Decl. (Docket No. 24-3) ¶¶ 4-6.) The same is true for defendant's ultimate parent, General Motors Company. (*Id.*) This is sufficient to show that defendant is a citizen of Michigan and Delaware.² 28 U.S.C. § 1332(c)(1); Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (limited liability corporations have citizenship of all their members).

Accordingly, defendant has established that parties are completely diverse pursuant to 28 U.S.C. § 1332.

2. Amount in Controversy

10 A defendant's initial burden in establishing the amount
11 in controversy for removal purposes is minimal: even a "plausible
12 allegation that the amount in controversy exceeds the
13 jurisdictional threshold" can suffice. Dart Cherokee Basin
14 Operating Co., LLC v. Owens, 135 S. Ct. 547, 551, 554 (2014)
15 (quoting 28 U.S.C. § 1446(a)). See also Gen. Motors Corp. v.
16 Manly Oldsmobile-GMC, Inc., No. C-07-0233 JCS, 2007 WL 776261, at
17 *3 (N.D. Cal. Mar. 12, 2007) ("Here, the allegations in the
18 complaint do not establish to a legal certainty that the amount-
19 in-controversy requirement cannot be met, that is, that there is
20 no set of facts that could be proven that would result in
21 equitable relief which would have a value . . . of \$75,000.00 or
22 more."))

Defendant clears this burden. During oral argument,
plaintiff reported that the actual amount paid to date under

26 ² Defendants sued under fictitious names are disregarded
27 when determining removal jurisdiction. 28 U.S.C. § 1441(b)(1). Accordingly, the court does not consider defendants Does 1-10 for the purpose of removal jurisdiction.

1 plaintiff's lease contract was around \$6,000. This provides a
2 plausible floor for actual damages. A Song-Beverly civil penalty
3 of twice this amount, see Cal. Civ. Code § 1794(c), is an
4 additional \$12,000.

5 As for attorneys' fees, defendant points to its
6 apparently significant experience with these types of cases,
7 where plaintiffs' counsel reportedly often claim hourly rates of
8 \$350-500 and seek fees exceeding \$50,000 under section 1794(d) of
9 Song-Beverly. (Remand Opp'n (Docket No. 24) at 5; Kuhn Decl.
10 (Docket No. 1-4) ¶ 10.) Defendant also refers the court to case
11 law in support of the \$50,000 amount. See, e.g., Selinger v.
12 Ford Motor Co., No. 2:22-CV-08883-SPG-KS, 2023 WL 2813510, at *11
13 (C.D. Cal. Apr. 5, 2023) (In Song-Beverly actions, "\$50,000 in
14 attorney's fees is, on average, commonly viewed as a reasonable
15 estimate . . .").

16 Finally, as to punitive damages, defendant offers
17 analogous cases where punitive damages exceeded \$50,000. (Remand
18 Opp'n at 3-6.) See Selinger, 2023 WL 2813510, at *10; In re
19 Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab.
20 Litig., No. MDL 2672 CRB (JSC), 2019 WL 693234, at *5-6 (N.D.
21 Cal. Feb. 19, 2019). See also Simmons v. PCR Tech., 209 F. Supp.
22 2d 1029, 1033 (N.D. Cal. 2002) (defendant may introduce evidence
23 of jury verdicts in cases involving analogous facts to establish
24 probable punitive damages).

25 Accordingly, defendant has made a plausible showing
26 that the amount in controversy exceeds \$75,000. The court will
27 therefore deny plaintiff's motion to remand.

28 II. Motion to Dismiss

1 Defendant directs its motion to dismiss only at
2 plaintiff's common law fraud claim (Claim 4), which is pled under
3 misrepresentation and concealment theories, and the claim under
4 the "fraudulent prong" of the UCL (Claim 5) (collectively the
5 "fraud claims"). (Mot. to Dismiss at 2.) Allegations of
6 fraudulent activity must satisfy the heightened pleading standard
7 of Rule 9(b) and identify "the who, what, when, where, and how"
8 of the fraud. Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106
9 (9th Cir. 2003). Plaintiff's fraud claims are defective in this
10 respect, as they do not even come close to alleging with the
11 requisite particularly the "who, what, when, where, and how" of
12 the specific acts comprising affirmative misrepresentations and
13 fraudulent conceal.

14 Plaintiff appears to acknowledge this deficiency and
15 requests leave to amend his complaint should the court dismiss
16 his fraud claims. (Docket No. 20 at 5.) Defendant does not
17 oppose such a request (Docket No. 23 at 3), and the complaint's
18 significant shortage of particular allegations regarding fraud
19 suggests that amendment would not be futile for plaintiff's fraud
20 claims. Accordingly, the court will grant defendant's motion to
21 dismiss and grant plaintiff leave to amend his complaint to
22 allege fraud with the requisite particularity.

23 IT IS THEREFORE ORDERED that plaintiff's motion to
24 remand to state court (Docket No. 22) be, and the same hereby is,
25 DENIED.³

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³ Plaintiff's evidentiary objections and motion to strike
28 (Docket No. 26) is also DENIED.

1 IT IS FURTHER ORDERED that defendant's motion to
2 dismiss plaintiff's common law fraud claim (Claim 4) and claim
3 under the "fraud prong" of California Business & Professions Code
4 § 17200 (Claim 5) (Docket No. 8) be, and the same hereby is,
5 GRANTED. Plaintiff's fraud claims are DISMISSED with leave to
6 amend. Plaintiff may file a First Amended Complaint consistent
7 with this order, if able, within twenty days of its issuance.

8 Dated: October 31, 2023



9 **WILLIAM B. SHUBB**
10 **UNITED STATES DISTRICT JUDGE**

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